

Internal Revenue Service

Department of the Treasury

Date:

AUG 31 1992

CERTIFIED MAIL

Employer Identification Number:

Form Number:

Tax Years:

December 31, 1988 & thereafter

Key District:

Person to Contact:

Contact Telephone Number:

Dear Sir/Madam:

This is a final adverse determination as to your exempt status under section 501(c)(3) of the Internal Revenue Code.

Our adverse determination was made for the following reason(s):

You have not established that you are not operated in furtherance of private interests. Further, part of your net earnings inure to the benefit of private individuals. You are not, therefore, operated exclusively for exempt purposes.

Contributions to your organization are not deductible under Code section 170.

You are required to file Federal income tax returns on the form indicated above. Based on the financial information you furnished, it appears that returns should be filed for the above years. You should file these returns with your key District Director, EP/EO Division, within 30 days from the date of this letter, unless a request for an extension of time is granted. Processing of income tax returns and assessment of any taxes due will not be delayed because you have filed a petition for declaratory judgment under Code section 7428. You should file returns for later tax years with the appropriate service center shown in the instructions for those returns.

If you decide to contest this determination under the declaratory judgment provisions of Code section 7428, a petition to the United States Tax Court, the United States Court of Claims, or the district court of the United States for the District of Columbia must be filed within 90 days from the date this determination was mailed to you. Contact the clerk of the appropriate court for rules for filing petitions for declaratory judgment.

(over)

Internal Revenue Service

Department of the Treasury

District
Director

31 Hopkins Plaza, Baltimore, MD 21201

Person to Contact:

Telephone Number:

Refer Reply to:

Date:

CERTIFIED MAIL

AUG 21 1990

Dear Applicant:

We have considered your application for exemption under section 501(c)(3) of the Internal Revenue Code.

The evidence submitted indicates that you were formed on [REDACTED]. The purpose of this organization is to have fundraisers and dances for the purpose of defraying and paying the medical and related expenses of [REDACTED] heart transplant and continued care and other related activities relating thereto.

A review of the financial data submitted discloses you have not generated any income or expenses as of the date we received your application.

Section 501(c)(3) provides for the exemption from Federal income tax of organizations organized and operated exclusively for charitable, educational and other stated purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Income tax regulations section 1.501(c)(3)-1(a)(1) provides that, to be exempt under section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in section 501(c)(3). If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(d)(ii) says that an organization is not organized or operated for section 501(c)(3) purposes unless it serves public rather than private interests.

Therefore, to meet the requirements of this section, the organization must establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled directly or indirectly by such private interests. Even when an organization has an exempt purpose, it will not be considered to be operating exclusively for such a purpose if more than an insubstantial part of its activities serve a private individual or interest.

[REDACTED]

A charitable organization must be set up for the benefit of an indefinite class of individuals, not for specific persons. A trust or corporation organized and operated for the benefit of specific individuals is not charitable, regardless of any established financial need.

In Wendy L. Parker Rehabilitation Foundation, Inc. v. Commissioner, 52 TCM, 1986-348, a nonprofit trust providing care and treatment of coma victims in various stages of recovery was denied exemption from taxation. In this case a substantial amount of the organization's funds were used to pay for the medical expenses of Wendy Parker, the daughter of the founders and creators of the organization. The court ruled that the organization failed to meet the private inurement test of section 501(c)(3) since the payment of benefits for the care of Wendy Parker constituted inurement of benefits to a specified, private individual.

Also, in Carrie A. Maxwell Trust, Pasadena Methodist Foundation v. Commissioner, 2 TCM 905, (1943), it was held that a trust set up for the benefit of aged clergyman and his wife was not an exempt organization. Despite the fact that the elderly gentleman was in financial need, this was a private trust, not a charitable trust, because it was created and operated for the benefit of specified persons.

Our review of your "1023" application submitted indicates that your purposes provide that this organization shall be a fund set-up for the benefit of [REDACTED]. Since a charitable 501(c)(3) exempt organization must be organized to benefit an indefinite class of individuals rather than specific persons, this document does not meet the organizational test to be exempt since the primary benefactor of the contributions to this organization is related to one of the founders and officer of the organization, [REDACTED].

You also fail to meet the operational test to be exempt under section 501(c)(3) since your activities provide benefits to a specific individual, [REDACTED], rather than a charitable class as required by this section.

Based on the information submitted, we have determined that you are not entitled to exemption under 501(c)(3) of the Internal Revenue Code and are a taxable entity. You are required to file federal income tax returns on Form 1120.

Contributions to your organization are not deductible under Section 170 of the Code.

If you do not accept our findings, we recommend that you request a conference with a member of our Regional Office of Appeals. Your request for a conference should include a written appeal giving the facts, law and any other information to support your position as explained in the enclosed Publication 892. You will then be contacted to arrange a date for a conference. The conference may be held at the Regional Office, or if you request, at any mutually convenient District office. If we do not hear from you within 30 days from the date of this letter, this determination will become final and a copy of this letter will be sent to the appropriate state officials in accordance with section 6104(c) of the Internal Revenue Code.

[REDACTED]

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part, that, "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Claims, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted all administrative remedies available to it within the Internal Revenue Service."

Sincerely yours,

[REDACTED]

District Director

Enclosure: Publication 892

cc: State Attorney General [REDACTED]